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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/622,615	08/18/2000	Mitsuzou Nogami	000774	7364

7590

04/16/2003

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EXAMINER

MERCADO, JULIAN A

ART UNIT

PAPER NUMBER

1745

11

DATE MAILED: 04/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Applicati n N .

09/622,615

Applicant(s)

NOGAMI ET AL.

Examiner

Julian A. Mercado

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--The MAILING DATE of this communication appears on the c ver sheet with the c rrespondence address --

THE REPLY FILED 26 March 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-5, 11-18, 25 and 26.

Claim(s) withdrawn from consideration: _____

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

Continuation of 3. Applicant's reply has overcome the following rejection(s): 103(a) rejection of claims 1-3, 5 and 26 based on Ohta et al. '636.

DETAILED ACTION

Remarks

This Office Action is in reply to applicant's after-final response filed March 26, 2003.

Applicant's response under 37 CFR §1.116 will be entered upon filing of a Notice of Appeal and an Appeal Brief. Applicant's remarks therein have been fully considered, however, they are not persuasive.

The rejection of claims 1-3, 5 and 26 under 35 U.S.C. 103(a) based on Ohta et al. '636 has been withdrawn.

The rejection of claims 1-5, 11-18, 25 and 26 under 35 U.S.C. 103(a) based on Ohta et al. '726 in view of Ovshinsky et al. is maintained for the reasons of record. The examiner's response to each of applicant's salient arguments here follows.

As a matter of clarification, the examiner would like to address applicant's interpretation of the rejection based on Ohta and Ovshinsky in applicant stating that "The rejection is maintained..." while also noting that the pending rejection is based on new grounds. The examiner would like to point out, however, that the discussion of Ohta '726 in view of Ovshinsky was more accurately prefaced in the prior Office Action by the statement "The rejection is maintained for the reasons of record *and for the additional reasons to follow.*" [emphasis added] That is, the ground of rejection incorporated by reference the detailed discussion of Ohta '726 such as discussed in Office Action Paper No. 6 sent July 17, 2002, while further discussing under the pretenses of the "additional reasons to follow" the new ground of

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rejection (notably necessitated by applicant's amendment) when taken in view the teachings of Ovshinsky.

Applicant submits that in Ohta '726, the "sintered nickel porous substrate" is disclosed "together with a porous foamed nickel". In reply, the examiner concedes that Ohta acknowledges that sintered nickel porous substrates are well-known in the art, along with other types of substrates such as foamed nickel. To this extent, applicant's response addressed the ground of rejection insofar as being based on Ohta '726 as a primary reference teaching.

However, applicant is reminded that the present ground of rejection is applied as also taking in view the teachings of Ovshinsky. In this regard, applicant submits that "Ovshinsky's comment regarding the trend toward foamed metal substrate electrodes would appear to suggest the opposite", that is, the opposite equating to a foamed nickel substrate in alleged contrast to the presently claimed sintered nickel porous substrate or sintered nickel electrode. The examiner notes, however, that the portion of Ovshinsky in connection with this discussion of such "trend toward foamed metal substrate electrodes" clearly states that such foamed metal substrate electrodes "has advantages as well as disadvantages", while the focus of this cited discussion (starting on col. 11 at line 51) clearly teaches away from such foamed metal substrate electrodes in listing the disadvantages thereof such as 1) low cycle life, 2) poor power capability, 3) weak porous structure, 4) swelling and electrolyte distribution problems, 5) shortened cell life, *inter alia*. Ovshinsky, in fact, is cited to teach that between a foamed electrode or sintered electrode the latter embodiment is preferred, "[c]onsequently, a sintered positive electrode having comparable energy storage capacity to pasted foam electrodes without reduced power and cycle life is very desirable." (Ovshinsky, col. 12 line 9-12) The contrasting advantages of a sintered

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nickel porous substrate as compared to a foamed metal substrate is in fact the permeating focus of Ovshinsky's entire disclosure.

Applicant reiterates a prior line of argument from the October 15, 2002 amendment, that Ohta '726 does not have a coating layer on the surface of an active material. As discussed on page 5 of Office Action Paper No. 9 sent December 27, 2002, this line of argument appears to submit that in Ohta '726 a coating layer coats the nickel hydroxide particle and is therefore **not** on the surface of the active material. [emphasis in original] However, as discussed in the December Office Action and as set forth from the outset of prosecution of this case on page 6 of Office Action Paper No. 6 sent July 17, 2002, the present claims do not specifically recite the instant "active material" as being present as a *layer*, which the examiner has noted in both occasions would preclude the present interpretation of the active material in particle form.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julian A. Mercado whose telephone number is (703) 305-0511. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan, can be reached on (703) 308-2383. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



jam

April 11, 2003



Patrick Ryan
Supervisory Patent Examiner
Technology Center 1700